

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JAMES SAUNDERS and SCOTT WEBB

Appeal No. 2002-0946
Application No. 09/590,121

ON BRIEF

Before MCQUADE, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 7, 8 and 10, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to an oil filter wrench provided with gripping fingers of the type which do not present jagged edges that may damage the oil filter.

Independent claim 1 is illustrative of the invention and reads as follows¹:

1. An oil filter wrench comprising a one piece gripping strap having an inner and outer surface, said strap being one uninterrupted piece from said inner to said outer surface, means for tightening the gripping strap, gripping means extending inwardly from the one piece gripping strap and being integral therewith, said gripping means comprising a plurality of one piece rigid gripping fingers integral and one piece with and extending inwardly from the inner surface of the one piece gripping strap, each of said gripping fingers being substantially round and symmetrical, and each of said gripping fingers having a substantially smooth and uninterrupted convex gripping inner surface, each of said fingers extending from the outer surface to the inner surface of the strap, each of said gripping fingers comprising a concave surface extending inwardly from the outer surface of the strap and a convex surface extending away from the inner surface of said strap, a plurality of said gripping fingers being provided on the strap in spaced relationship to each other, said plurality of said gripping fingers comprising a cluster of said fingers at spaced intervals around said strap, each cluster of fingers comprising a plurality of said fingers, said tightening means comprising the strap having a pair of end edges with the end edges mounted on a handle at pivoted points on said handle which are spaced from each other, said clusters are provided around the strap in equidistant relationship to each other, each cluster comprising a plurality of rows of fingers, said rows are parallel to an edge of the strap and the rows of fingers are parallel to each other.

¹ The copy of claim 1 in the appendix to appellants' brief contains substantial errors in that it omits language contained in claim 1 of record.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Loxterkamp	771,376	Oct. 4, 1904
Bram	2,780,951	Feb. 12, 1957
Halpin	5,056,383	Oct. 15, 1991

The following rejection is before us for review.

Claims 1, 7, 8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Loxterkamp in view of Halpin and Bram.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (Paper No. 9) for the examiner's complete reasoning in support of the rejection and to the brief and reply brief (Paper Nos. 8 and 10) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification² and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

² The amendment to page 1 of the specification (see Paper No. 3, page 1, item 4) providing continuing data apparently lists an incorrect parent application number. It appears that the correct application number is 09/173,417.

At the outset, we observe that “said clusters” in claim 1 lacks clear antecedent basis. While claim 1 positively recites “a cluster” of said fingers, the claim lacks clear and positive recitation of a plurality of said clusters so as to provide clear antecedent basis for “said clusters.” In our opinion, the scope of the claim as a whole is easily ascertainable to one of ordinary skill in the art and thus is not indefinite. Specifically, it is apparent from a reading of claim 1 as a whole that it includes a plurality of clusters of fingers. The lack of clear antecedent basis for “said clusters” is deserving of correction, however, by adding language such as --a plurality of-- before “said clusters.”

Turning now to the examiner’s rejection, there does not appear to be any dispute that Loxterkamp discloses a flexible wrench which meets the limitations of claim 1 with the exception of fingers extending inwardly from the inner surface of the one piece gripping strap (metallic band 2). Halpin (column 2, lines 25-29) teaches piercing a steel gripping band to provide the inner surface of the band “with a series of spaced apart and inwardly facing projections 26 which act as gripping teeth.” The piercing of the steel gripping band by Halpin appears to result in just the type of prior art wrench with jagged edges which appellants sought to improve in developing their invention (specification, page 1, lines 9-13). Halpin’s projections 26 do not comprise a concave surface extending inwardly from the outer surface of the strap or a convex surface extending away from the inner surface of the strap, as called for in claim 1.

Bram (column 2, lines 7-14) teaches a wrench comprising a gripping band 11 which is covered on its inner face with a lining 15 of an elastic material, such as rubber,

the lining 15 including on its inner surface a plurality of fairly shallow projections 16, which appear to present a convex surface extending away from the inner surface of the strap (see Figures 3 and 4). Alternatively, the gripping band may be embedded in a lining 15^a, as illustrated in Figure 5. In any event, the projection-forming technique of Bram results in projections which are not rigid and which do not extend from the outer surface to the inner surface of the strap, as called for in claim 1.

From our perspective, Halpin and Bram teach two alternative techniques for providing gripping projections extending inwardly from the inner surface of a gripping strap. As such, a combination of the teachings of Loxterkamp, Halpin and Bram would have suggested to one of ordinary skill in the art at the time of appellants' invention the provision on Loxterkamp's metallic band 2 of either projections formed by piercing all the way through the metallic band, as taught by Halpin, or an inner elastic liner having projections formed thereon, as taught by Bram, neither of which would arrive at the subject matter of claim 1, for the reasons discussed above. Thus, we conclude that the teachings of the applied references are insufficient to establish a prima facie case of obviousness of the claimed invention³. Accordingly, we reverse the examiner's rejection of claim 1, as well as claims 7, 8 and 10 which depend therefrom, as being unpatentable over Loxterkamp in view of Halpin and Bram.

CONCLUSION

³ It is elementary that to support an obviousness rejection, all of the claim limitations must be taught or suggested by the prior art applied (see In re Royka, 490 F.2d 981, 984-85, 180 USPQ 580, 582-83 (CCPA 1974)) and that all words in a claim must be considered in judging the patentability of that claim against the prior art (In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)).

To summarize, the decision of the examiner to reject claims 1, 7, 8 and 10 under 35 U.S.C. § 103 is reversed.

REVERSED

JOHN P. MCQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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Appeal No. 2002-0946
Application No. 09/590,121

Page 7

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